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CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 305.

THE STEAMSHIP "VALENCIA," HER TACKLE, &c., WILLIAM G. BOULTON ET AL., CLAIMANTS, APPELLANTS,

vs.

WILLIAM H. ZIEGLER ET AL.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

FILED DECEMBER 18, 1893.

(15,468.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 25, 1895.

1 At a term of the United States circuit court of appeals for the second circuit, held at the Federal building, in the city of New York, southern district of New York, on the 12th day of December, 1893.

Present: Hon. William J. Wallace, Hon. E. Henry Lacombe, Hon. Nathaniel Shipman, circuit judges.

WILLIAM H. ZIEGLER and Another, Libellants & Appellees,
vs.
THE STEAMSHIP VALENCIA, HER TACKLE, ETC.; WILLIAM G. BOULTON and Others, Claimants & Appellants.

Statement of Facts.

The libellants furnished coal in the port of New York for the specific use of and to be delivered by them on board the steamship Valencia, the same being necessary to enable her to make a series of regular trips from New York to and from ports in Maine. The coal was furnished upon orders given to the libellants by the New York Steamship Company, a New Jersey corporation engaged in business at the port of New York. In some cases these orders were sent direct by mail; in others, were transmitted through a broker to libellants either by the general manager of the company or the superintendent of its dock. The corporation operated the steamship under a charter which required them "to provide and
2 pay for all the coals," etc. None of the coal was delivered upon the order of the master or by his procurement or with his expressed assent. The vessel was owned by citizens of New York, but was registered at the port of Wilmington, N. C. At the time libellants furnished the coal they were not aware of the existence of the charter nor did they know where the ship hailed from, whether she was foreign or domestic, who her owners were, or what relation the New York Steamship Company bore to the vessel, except that it appeared to be directing its operation, and they were ignorant of its credit. The libellants made no enquiry as to the solvency of the New York Steamship Company or as to who were owners of the ship nor as to whether she was a foreign or a domestic vessel, but, believing the ship to be responsible for supplies thus furnished, delivered the coal and charged the same on their books to "S. S. Valencia and owners, New York," or in some cases "city" or in others, "Pier 49, E. R., New York." The Laws of the State of New York (chap. 482 of 1862) provide that:

"SEC. 1. Whenever a debt amounting to fifty dollars or upwards as to a sea-going or ocean-bound vessel * * * shall be contracted by the master, owner, charterer, builder, or consignee of any ship or vessel or the agent of either of them within this State for either of the following purposes:

1st. On account of work done or materials or other articles furnished in this State for or towards the building, repairing, fitting, furnishing, or equipping such ship or vessel;

2nd. For such provisions and stores furnished within
3 this State as may be fit and proper for the use of such vessel at the time the same were furnished, * * * such debt shall be a lien upon such vessel, her tackle, apparel, and furniture, &c., &c.," provided such lien is filed within a specified time and is proceeded under in the manner prescribed in such statute. There is no fact proved in the case which will warrant the inference that either the master or the charterer agreed to pledge the credit of the vessel for the coal. Libellants began to supply coal on April 30, 1890. They furnished from time to time, down to and including July 5, six cargoes of coal, bills for which were sent to the office of the steamship company at No. 63 Broadway, New York, and paid by it. No lien was filed under the State statute. Libellants insist that for other supplies of coal, of the value in the aggregate of $1,608.55, furnished in the months of June, July, and August they are entitled to a maritime lien on the ship. The district court sustained their claim and appeal was taken to this court.

Now, therefore, pursuant to section 6 of chapter 517 of the Laws of 1891 this court does hereby certify to the Supreme Court the following question or proposition of law, concerning which it desires the instructions of that court for its proper decision, to wit:

Question. Whether upon the above statement of facts the libellants obtained a maritime lien upon the steamship Valencia for the supplies thus furnished and not paid for.

New York, Dec'r 12th, 1893.

WM. J. WALLACE.
E. HENRY LACOMBE.
N. SHIPMAN.

4 [Endorsed:] United States circuit court of appeals for the second circuit. William H. Ziegler & another, libellants and appellees, *vs.* The Steamship Valencia, her tackle, etc.; William G. Boulton & others, claimants and appellants. Certificate to the Supreme Court of the United States. United States circuit court of appeals, second circuit. Filed Dec. 12, 1893. John A. Shields, clerk.

5 UNITED STATES OF AMERICA, *Second Circuit,* } *ss:*

I, John A. Shields, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing certificate in the cause entitled William H. Ziegler and another, libellants and appellees, *vs.* The Steamship Valencia, her tackle, etc.; William G. Boulton and others, claimants and appellants, was duly filed and entered of record in my office by order of said court on the twelfth day of December, 1893, and, as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof I have hereunto subscribed my name and

Seal United States Circuit Court of Appeals, Second Circuit.

affixed the seal of the said United States circuit court of appeals for the second circuit, at the city of New York, in the southern district of the State of New York, this fourteenth day of December, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States the one hundred and eighteenth.

JOHN A. SHIELDS,
Clerk United States Circuit Court of Appeals for the Second Circuit.

Endorsed on cover: Case No. 15,468. U. S. circuit court of appeals, 2nd circuit. Term No., 305. The Steamship "Valencia," her tackle, &c.; William G. Boulton *et al.*, claimants, appellants, *vs.* William H. Ziegler *et al.* Filed December 18, 1893.

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JAMES H. McKENNEY,
CLERK.

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TO THE SUPREME COURT OF THE UNITED STATES :

The petition of William H. Ziegler and Charles G. Barber respecfully shows :

That for the reasons hereinafter set forth your petitioners pray this Honorable Court to issue its *certiorari* to the United States Circuit Court of Appeals for the Second Circuit pursuant to Section 6 of an Act of Congress entitled "An Act to establish Circuit Courts of Appeals and to define and regulate in certain cases the jurisdiction of the Courts of the United States and for other purposes," approved March 3d, 1891, requiring said Circuit Court of Appeals to certify to this Court the whole of its record and proceedings in the cause in admiralty between your petitioners and the steamship "Valencia," whereof Boulton, Bliss & Dallett are claimants (a certified copy of the record whereof is herewith filed), a question of law in which cause has been lately certified to this Court by said United States Court of Appeals for the instruction of said Court pursuant to Section 6 of said Act of Congress, and that when such record and proceedigs are so certified, this Court may decide the whole matter in controversy in this cause, and as reasons for so praying your petitioners allege the following :

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First.—That on or about the 12th day of December, 1893, the United States Circuit Court of Appeals for the Second Circuit made its certificate in this cause of a question of law upon which it desired instruction pursuant to Section 6 of the said Act of Congress and transmitted it to the Clerk of the Supreme Court of the United States, the following is a copy of such certificate :

At a Term of the United States Circuit Court of Appeals, for the Second Circuit, held at the Federal Building in the City of New York, Southern District of New York, on the 12th day of December, 1893.

Present—Hon. WILLIAM J. WALLACE,
Hon. E. HENRY LACOMBE,
Hon. NATHANIEL SHIPMAN,
} Circuit Judges.

WILLIAM H. ZIEGLER and another,
Libellants & Appellees,

vs.

The Steamship VALENCIA, her tackle, etc., WILLIAM G. BOULTON, and others,
Claimants & Appellants.

Statement of Facts.

The libellants furnished coal in the port of New York for the specific use of and to be delivered by them on board the steamship Valencia, the same being necessary to enable her to make a series of regular trips from New York to and from ports in Maine. The coal was furnished upon orders given to the libellants by the New York Steamship Company, a New Jersey corporation engaged in business at the port of New York. In some cases these orders were sent direct by mail, in others were transmitted through a broker to libellants, either by the general manager of the Company or the superintendent of its docks. The corporation operated the steamship under a charter which required them "to pro-

vide and pay for all the coals," etc. None of the coal was delivered upon the order of the master, or by his procurement, or within his expressed assent. The vessel was owned by citizens of New York but was registered at the port of Wilmington, N. C. At the time libellants furnished the coal they were not aware of the existence of the charter nor did they know where the ship hailed from, whether she was foreign or domestic, who her owners were, or what relation the New York Steamship Company bore to the vessel, except that it appeared to be directing its operation; and they were ignorant of its credit. The libellants made no enquiry as to the solvency of the New York Steamship Company or as to who were owners of the ship, nor as to whether she was a foreign or a domestic vessel, but, believing the ship to be responsible for supplies thus furnished, delivered the coal and charged the same on their books to "S. S. Valencia and owners, New York," or in some cases "City," or in others, "Pier 49, E. R, New York." The Laws of the State of New York (Chap. 482 of 1862) provide that: 7 8

Sec. 1.—Whenever a debt amounting to fifty dollars or upwards, as to a sea-going or ocean-bound vessel * * * shall be contracted by the master, owner, charterer, builder or consignee of any ship or vessel or the agent of either of them within this State for either of the following purposes:

1st.—On account of work done or materials or other articles furnished in this State for or towards the building, repairing, fitting, furnishing or equipping such ship or vessel. 9

2d.—For such provisions and stores furnished within this State as may be fit and proper for the use of such vessel, at the time the same was furnished * * * such debt shall be a lien upon such vessel, her tackle,

10 apparel and furniture, &c., &c; provided such lien is filed within a specified time and is proceeded under in the manner prescribed in such statute. There is no fact proved in the case which will warrant the inference that either the master or the charterer agreed to pledge the credit of the vessel for the coal. Libellants began to supply coal on April 30, 1890. They furnished from time to time, down to and including July 5, six cargoes of coal, bills for which were sent to the office of the steamship company at No. 63 Broadway, New York, and paid by it. No lien was filed under the State statute. Libellants insist that for other supplies of coal of the value in the aggregate of $1,608.55, furnished in the months of June, July and August, they
11 are entitled to a maritime lien on this ship. The District Court sustained their claim, and appeal was taken to this Court.

Now, therefore, pursuant to Section 6 of Chapter 517 of the Laws of 1891, this Court does hereby certify to the Supreme Court the following question or proposition of law concerning which it desires the instructions of that Court for its proper decision, to wit:

Question.—Whether upon the above statement of facts the libellants obtained a maritime lien upon the Steamship Valencia for the supplies thus furnished and not paid for?

NEW YORK, Dec. 12th, 1893.

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WM. J. WALLACE,
E. HENRY LACOMBE,
N. SHIPMAN.

Second.—That said certificate has been received by the Clerk of this Court and the cause is now No. 1,084 on the docket for the present term of this Court.

Third.—That said certificate contains the statement 13
that the steamship Valencia was owned by citizens of New York, but that fact nowhere appears in the testimony contained in the record and nowhere is there any testimony as to the citizenship of the said owners, and your petitioners assert that for this reason the whole record should be before the Court upon the decision of the question certified to it as aforesaid, for that they will be greatly injured by the said statement in said certificate contained.

Fourth.—That besides the question certified as aforesaid there is in the cause other questions involved, one of which as your petitioners are advised is the question whether they are entitled to recover demurrage. 14

WHEREFORE, your petitioners pray that this Honorable Court will by its writ of certiorari or in such other manner as to it seems meet require the whole of the record and cause in William H. Ziegler and Charles G. Barber against steamship Valencia be sent up to it for its con ideration and that thereupon it will decide the whole matter in controversy in the same manner as if it had been brought to it for review by writ of error or appeal and otherwise right and justice do and your petitioners will ever pray.

Dated New York, January 18th, 1884.

WILLIAM H. ZIEGLER and CHARLES G. BARBER, 15
By JOHN A. DEADY,
Of Counsel of said Petitioners,
59 Wall Street,
New York.

16 *Southern District of New York*, ss.:

JOHN A. DEADY, being duly sworn, says, that he is of counsel for the petitioners herein, that he is familiar with all the matter stated in the foregoing petition, that the same are true of his own knowledge and that in his opinion the above application is meritorious and the cause a proper one for the relief prayed for.

JOHN A. DEADY.

Sworn to before me, this
18th day of January, 1894.

AVERY F. CUSHMAN,
Notary Public,
17 [SEAL.] Kings County.

Certificate filed in New York County.

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JAMES H. McKENNEY,
CLERK

Livingston Middleditch Co., 65 to 67 Duane St. Telephone Franklin 184.

Supreme Court of the United States.

WILLIAM H. ZIEGLER and CHARLES G. BARBER,
Libellants and Appellees,

AGAINST

The Steamship "VALENCIA," her Tackle, etc., WILLIAM G. BOULTON *et al.*,
Claimants and Appellants.

No. 305.

October Term, 1895.

On Certificate from the Circuit Court of Appeals for the Second Circuit, pursuant to Section 6 of Chapter 517 of the Laws of 1891.

Statement of Facts.

This was a suit brought to enforce a maritime lien on the steamship *Valencia* for supplies of coal furnished by the libellants.

The *Valencia* was registered at Wilmington, N. C., but its owners resided in New York.

The coal was furnished to enable the steamship to make a series of regular trips from New York to and from ports in Maine.

At that time the steamship was operated under charter from the owners by the New York Steamship Company, a New Jersey corporation, engaged in business at the port of New York.

The charter of the Steamship Company required it to provide and pay for all coal on the steamship.

The coal was ordered either by the General Manager of the New York Steamship Company or by the superintendent of its docks, direct by mail, or through a broker; none of the coal was delivered upon the order of the master, or by his procurement or with his expressed assent.

The libellants began to supply coal on April 30, 1890; they furnished six cargoes from time to time down to and including July 5, 1890. Bills for such coal were sent to the office of the charterer in the City of New York and paid by it.

Other coal was furnished by the libellants during the months of June, July and August, 1890, of the value of $1,608.55, for which the libellants claim they are entitled to a maritime lien on the steamship.

The Court finds that there is no fact proved in the case which will warrant the inference that either the master or the charterer agreed to pledge the credit of the vessel for the coal.

The libellants made entries on their own books, charging the coal furnished indifferently to "SS. *Valencia* and owners, New York," or "City" or "Pier 48, E. R., N. Y."

At the time the coal was furnished the libellants were not aware of the existence of the charter, nor did they know where the vessel hailed from, whether she was foreign or domestic, who her owners were, or what relation the New York Steamship Company bore to the vessel, except that it appeared to be directing its operations.

The libellants were ignorant of the credit of the Steamship Company; they made no inquiries as to its solvency, as to who were the owners of the vessel or as to whether she was a foreign or domestic vessel.

The statute of the State of New York gives to the material-man a lien in such a case, *provided* a statement of the claims for such lien is filed within a specified time, and is proceeded under in the manner therein prescribed. No lien, however, was filed under the statute.

The sole question, therefore, is whether the libellants had a maritime lien on the steamship for the supplies furnished and not paid for.

Point I.

In the absence of an agreement or understanding that the credit of the vessel was pledged for the supplies, the burden of proof was on the libellants to prove that the supplies were not furnished on the personal credit of the charterer.

Even assuming that the vessel was in a foreign port, the supplies were not ordered by the master, but by the charterer, who was personally bound to pay for for them, at the port where they were furnished, and at the port where the charterer was engaged in business.

Where supplies are ordered *by the master* in a foreign port, the proof that the supplies were necessary is sufficient to establish a presumption that the credit of the vessel was pledged to secure such supplies.

The Grapeshot, 9 Wall., 129.

But even this presumption is rebutted where it is proven that the master had funds in his hands to pay for such supplies, and this was known to the material-men, or that the material-men acted in bad faith.

The Lulu, 10 Wall., 192.

Such presumption of pledging the credit of the vessel exists only in case of where the goods are ordered *by the master*. Where they are ordered by the owner, even in a foreign port, a different rule applies. The material-man is presumed, in dealing with the owner, to rely upon his personal credit. To obtain a lien on the vessel the material-man must show that there was an understanding that the goods were sold on the credit of the vessel, or that the owner was known to be insolvent.

Thus in the *St. Jago de Cuba*, 9 Wheat., 409, the Court says:

> "* * * The law maritime attaches the "power of pledging or subjecting the vessel to "material-men, *to the office of the shipmaster;* "and considers the owner as vesting him with "those powers by the mere act of constitut- "ing him shipmaster. The necessities of "commerce require that when remote from his "owner, he should subject his owner's property "to that liability, without which, it is reason- "able to suppose, he will not be able to pursue "his owner's interests. But *where the owner is* "*present, the reason ceases*, and the contract is "inferred to be with the owner himself, on his "ordinary responsibility, without a view to the "vessel as the fund from which the compensa- "tion is to be derived."

In Thomas *v.* Osborn, 19 How., 22, Chief Justice Taney states the rule; that when the owner is present the well settled law is that *the credit is presumed to have been given to him personally and no lien on the vessel is implied.*

In the case of Stephenson *v.* The Francis, 21 Fed. Rep., 715, this question was carefully examined by Judge Brown of the Southern District of New York, who states the law as foliows:

> "But there is no presumption of law that an "owner, because he is in a foreign port, includ- "ing in that designation the different States of "this country, is without means, reputation or "credit, and has no other resource but the ship "to obtain needed supplies. The reason for the "*prima facie* presumption in the case of sup- "plies ordered *by the master* in a foreign port, "does not apply, therefore, where the owner is "present and orders the supplies in person, and "hence no such *prima facie* presumption has "ever been recognized.

"It is only when the material-man deals "*with the master, or the ship's agent, or some* "*officer of the ship*, by the master's sanction or "acquiescence, that he deals presumptively "with the ship herself, or sells to the ship upon "her credit."

These cases have been followed by the various District Courts and Circuit Courts of Appeals as decisive upon the question that where the supplies are ordered by the owner or charterer, even in a foreign port, the presumption is that such goods were furnished upon the personal credit of the charterer.

In *The Samuel Marshall*, 54 Fed., 754, the Court says:

"If the vessel is then in the use, possession "and control of others than the owner, a pre- "sumption arises that such others are liable to "pay the charges incident to the employment "and if the party furnishing the supplies knew "or should have known the facts in regard to "the use and control of the vessel, there is the "same reason for the presumption against the "credit being given to the vessel, when the "charterer or other person standing in a similar "relation to the vessel resides at the port of "supply, as in cases where the owner operating "the vessel on his own account resides at such "port and where there is the same reason there "should be the same law."

In *The Norma*, 28 Fed., 383, the Court says:

"But Murray, Ferris & Co. (the charterers), "were residents of New York, at which port "the vessel was lying when the coal was pur- "chased, and they furnished it directly without "the intervention of the official representatives "of the vessel. They were the owners of the "vessel *pro hac vice*, because they had posses- "sion of the vessel and she was at their sole dis-

> " posal until the end of the charter. These facts " repel the implication that the coal was furnished " upon the credit of the vessel, but warrant the " inference that it was furnished upon the per- " sonal credit of the charterers and ostensible " owners. At least they were sufficient to put " the libellant upon inquiry as to the actual re- " lations of Murray, Ferris & Co. to the vessel " and their obligations under the charter party, " and this must have resulted in the knowledge " that the act of the charterers could not, under " the circumstances, impose a lien on the " vessel."

And in the *Now Then*, 55 Fed. Rep., 523, on appeal from the District Court, the Court of Appeals says:

> " The main question was and is, whether the " libellants had established a right to a lien upon " the vessel. The Court below, citing the " case of the *Lulu*, 10 Wall., 197, held the " general rule to be, ' If necessary repairs and " ' materials are made and furnished to a ves- " ' sel in a port other than her home port, *prima* " ' *facie* presumption is that they were made " ' and furnished on the credit of the vessel, " ' unless the contrary appears from the evidence " ' in the case,' but also referred to the qualifi- " cation of this rule under the *Mary Morgan*, " 28 Fed. Rep., 196, and the *Francis*, 21 " Fed. Rep., 715, to the effect that ' when the " ' work is done *by order of the master*, a lien is " ' implied, but for work done by order of the " ' owner, no lien will exist unless proved by the " ' agreement of the parties.' The learned Judge " of the District Court was of opinion that " in view of this qualification of the rule, a lien " did not exist in this case, because the work " was not done nor the materials supplied upon " the order of the master, but by order of a " representative not of the vessel, but of the

"owner; but that even under the rule as broadly
"stated there would be no lien, because it ap-
"peared from the evidence that in point of fact
"the work was not done on the credit of the
"vessel. We have no hesitation in adopting the
"learned Judge's opinion as to the law."

See also *The Suliote*, 23 Fed. Rep., 919;
The Pirate, 32 Fed. Rep., 486;
The Glenmont, 34 Fed. Rep., 402;
The Aeronaut, 36 Fed. Rep., 497;
McCaldin v. The Stroma, 41 Fed. Rep., 599;
The Alvira, 63 Fed. Rep., 1:4;
The Columbus, 67 Fed. Rep., 556.

There are three cases in this Court where a maritime lien has been sustained where supplies have been ordered by the charterer: *The Guy*, 9 Wall., 758; *The Kalorama*, 10 Wall., 20; *The Patapsco*, 13 Wall., 329; but an examination of these cases shows that they do not involve any disapproval of the general principle.

In each of these cases *circumstances were shown rebutting the presumption of a personal credit.* In the case of the *Guy*, the facts are meagerly reported, but by reference to the facts as found by the Court below, 1 Benedict, 112, it will be seen that the Court came to the conclusion that *there was an understanding that the goods were sold on the credit of the vessel.* In the case of the *Kalorama*, the Court found *there was a necessity* for the lien. The case of the *Patapsco* shows that the libel was sustained on one of the grounds which constitute an exception to the rule—*the charterer was known to be hopelessly insolvent.*

The Court says:

"It is in proof that the company which owned
"the line of steamships was at the date of these
"transactions *hopelessly insolvent, and were bor-*
"*rowing large sums of money on a mortgage of*
"*their steamers away from home, and in the*
"*very city where the libellant resided.*"

The facts in the case of the *Patapsco* further show that the libellant did not even rely on the *presumption* of a credit given to the vessel, but *assumed the burden of establishing facts to show that they relied on the credit of the vessel when they furnished the supplies in question.*

And in concluding the Court says :

> "On the whole, while we concede that the "case is not free from difficulty, we are not dis- "posed to disturb the decree of the Circuit "Court in any particular."

The case is an extreme one on the facts; the supplies (coal) were purchased to enable the vessel to continue her voyage; the owners were hopelessly insolvent and were hypothecating their property, and resided in a city distant from that in which the supplies were furnished.

The only case in the Courts below which follows a contrary doctrine is the case of the *George Dumois*, 68 Fed. Rep., 927. The Court there holds, without citing any authority, except one of its previous decisions and the case of the *Patapsco*, that where necessary supplies are furnished to a ship in a foreign port, even under the order of a known charterer, the presumption was they were furnished on the credit of the vessel, and the burden of proof is on the owner to prove that the supplies were furnished on his personal credit. This case stands alone against the overwhelming weight of authority already shown.

None of the cases cited in opposition to the presumption of personal credit is as strong as the case at bar.

In this case goods were supplied in the port where the owner resided, in the port where the vessel made regular and frequent journeys, and not in a port of refuge. The goods were not ordered to supply any emergency, and the charterers who ordered the goods resided also at such port. There was no allegation that the charterers or the owners were insolvent, or

that the charterers were not in a position to have obtained the goods on their personal credit.

Point II.

A. The supplies having been ordered by the charterers, who were under obligation to supply coal, no agency can be inferred on the part of the charterers to pledge the credit of the vessel. If the libellant had personal knowledge of this fact, no maritime lien for such supplies could be sustained.

> *The Francis*, 21 Fed. Rep., 715;
> McCaldin *v.* The Stroma, 41 *id.*, 599.

B. But even without absolute personal knowledge, the material-man is chargeable with knowledge if he had opportunity to ascertain the fact. The libellants are chargeable with notice of these facts. The facts were readily ascertainable, and if they were not known to them, it was by reason of their negligence, as the charterer resided in the port where the supplies were ordered, and was in personal communication with the libellants.

The officers of the company having ordered supplies, the bills having been sent to them, and paid by them, it was incumbent upon the libellants to ascertain what relation the steamship company bore to the vessel; or, if they did not ascertain it, they were guilty of negligence.

The rule is well established that ignorance of a person who is in a position to make inquiries, which every prudent man should make, does not put him in the position of an innocent person, and is sustained by the decision in the *Lulu*, 10 Wall., 192. Judge Clifford, at page 203, says:

> "Viewed in any light it is clear that the
> "necessity for credit must be presumed *where it*
> "*appears that the repairs and supplies were*
> "*ordered by the master*, and that they were

> " necessary for the ship when lying in port or
> " to fit her for an intended voyage, unless it is
> " shown that the master had funds, or that the
> " owners had sufficient credit, and that the re-
> " pairer, furnisher or lender knew those facts
> " or one of them, or that *such facts and circum-*
> " *stances were known to them as were sufficient to*
> " *put them upon inquiry and to show that if*
> " *they had used due diligence they would have*
> " *ascertained that the master was not authorized*
> " *to obtain any such relief upon* the credit of
> " the vessel."

This rule applies with much greater force where the goods are not ordered by the master, and greater diligence is incumbent upon the material-man where the goods are ordered by one whom he knows is not the master or an officer of the vessel, and where they are not ordered in a port of distress or upon an emergency. This is aptly illustrated by Judge Brown in the case of *The Curlew*, 54 Fed. Rep., 899. (Same point as in *The Francis*). We quote:

> " They knew the firm was in business in Balti-
> " more. Any inquiry would have shown that
> " they were charterers. If they made no in-
> " quiry, they took the risk of the fact; they
> " could not have supposed the firm to have
> " been officers of the ship, and if they did not
> " mean to deal with them as owners or on their
> " personal credit, it was their duty to inquire
> " what the connection of the firm with the
> " vessel was."

Point III.

No necessity, or apparent necessity, is shown for a lien.

In the case of Thomas *v.* Osborn, 19 How., 29, the doctrine is laid down that in order to obtain a maritime lien, even where the goods are ordered by the master, the repairs and supplies furnished must be needful, and that it must be apparently necessary for the master to have the credit to procure them.

This case has been the subject of some adverse criticism. *The Grapeshot* and *The Lulu*, *supra*. But such criticism does not apply to the general principle of the necessity for the credit, but only to the degree of presumption where the goods are ordered by the *master*. Thus, in *The Grapeshot*, p. the Court says:

> "Where goods are ordered by the master, "the proved necessity for repairs may be "received as presumptive evidence sufficient, "in the absence of other evidence, to estab- "lish a case of apparent necessity, upon which "the lender or furnisher may act. *But this* "*only applies to cases where goods are ordered* "*by the master.*"

In the case at bar, the libellants furnished no facts whatever to show such necessity; the certificate states "that there is no fact proved in the case which will warrant the inference that either the master or the charterer agreed to pledge the credit of the vessel," and therefore the next inquiry would naturally be, what necessity was there for establishing any such credit?

The necessity for establishing such a credit has generally been, where the goods are not ordered by the master:

That the vessel was in a foreign port;

That the person ordering the goods, whether owner or charterer, was a stranger to the material-man;

That he was not in good credit;

That he was known to be insolvent; or, else,

That he was in a port so distant from his usual place of residence or business, that inquiries as to his credit could not be made.

None of these facts exists in this case. Even if at the time that the first supplies were furnished the charterer was unknown to the libellant, yet it was known that the office of the vessel was in the port of New York, and the name of the company, "The New York Steamship Company," suggested that it was a New York corporation (though in fact it was a New Jersey corporation), and when the supplies in question were furnished the libellant had been dealing with the charterers for several months; they had received orders from them for supplies, which were paid for, and it is presumed promptly, and from the dates of the payments the account must have been a running account—that is, that goods were ordered at times when previous orders had not been fully paid.

In the absence of any proof to the contrary, the presumption must have been that at that time the company was in good credit with the libellants and that they relied upon their personal credit and regarded them as a corporation which paid its bills, and could be relied upon to pay them within a reasonable time.

Thus it was held by Judge Nelson in Pratt *v.* Reed, 19 How., 359, at p. 361:

> "Supplies having been furnished at a fixed
> " price, according *to the account current and ap-*
> " *parently under some general understanding*
> " *and arrangement*, the presumption is that
> " there could be no necessity for an implied
> " hypothecation of the vessel."

These observations apply very strongly to this case, as there must have been some arrangement made as to the price and terms of payment. It would be rather unusual for a charterer to procure goods necessary to supply the usual needs of a vessel without some agreement as to price and terms of payment, and no reason appears, nor is there any suggestion, that these goods

could not have been purchased upon the credit of the charterer (see fol. 7 of Certificate).

Point IV.

Though the corporation was a corporation of New Jersey, yet it was engaged in business and had its principal place of business at the port of New York, and its title would indicate that it was formed for the purpose of doing business in New York. The owners were residents of New York, where the vessel belonged, and if there had been no charter, New York would certainly have been considered as the home port of the vessel, and therefore no maritime lien, in the absence of express agreement, would attach.

The question, therefore, is whether chartering the vessel to a corporation organized in another State, but engaged in business at the home port of the vessel at the time of the charter, would constitute this a foreign vessel. It has been questioned in several cases above cited, where these facts existed, which would be the home port of the vessel. The Court must take judicial notice of the fact that corporations are organized in one State for the express purpose of doing business in another, and that the State where the company is organized is merely a nominal residence; that the corporation often does no business in such States and practically has no assets there.

If the principle establishing the home port of the vessel is a practical one, there might be a more difficult question where such foreign corporation is the *owner;* but we submit that the home port of the vessel should not be shifted where the *charterer* is such a corporation, even though a charterer may be the owner *pro hac vice.* In such a case, persons dealing with such a corporation at the home port of the vessel have means of ascertaining the credit of the charterer.

If the true ground of holding a maritime lien where

goods are ordered in a foreign port, is that the owner is unknown to the material-man, and he cannot ascertain whether or not he is in good credit, this reason certainly cannot apply to the case of a corporation engaged in business and having all its assets at the port where the material-man resides, and where the goods were furnished, and in this respect the rule has no application.

Point VI.

Even though the Court should be of opinion that the place where the charterer was organized, should be the home port of the vessel, yet the fact that the corporation was in business at the port where the goods were furnished, should be taken into consideration as to the propriety of establishing a lien on the vessel.

Point VII.

In considering the power of the charterer to pledge the credit of the vessel, a distinction should be made as to supplies required on an emergency, and goods required for the usual needs of the vessel.

The Francis, *supra*, on page 726.

It is not necessary in this case to go to the length of holding that the charterer may not pledge the credit of the vessel where it is in distress, or the supplies are required for an emergency; there is no pretense that such facts exist in this case, nor that there was any justification for the material-man to believe that the supplies were ordered except for the regular trips of the vessel engaged in navigating between the usual termini of her route. We have not been able to find a case where under such circumstances a maritime lien was sustained.

Moreover, it matters little in the present case whether

the charterer *had the power* in an emergency, to pledge the credit of the vessel ; he did not do so, and the Certificate states that there is no proof to warrant such an inference.

If the libellants can succeed in this case, they could charge the vessel for *all the coal supplied during the entire season.* Even in the case of the master, there could be no presumption that he was authorized to make such a contract, or to pledge the credit of the vessel to that extent. If the goods had been ordered at the home port on the arrival of the vessel at each trip, the libellants would have been charged with the duty of inquiring what right the master had to give such orders.

If the supplies were ordered by a person other than the master, the libellants were chargeable with the duty of inquiring what relation the person ordering the goods bore to the vessel, and what authority such person had to order them.

The libellants after receipt of numerous orders knew that such goods could not have been ordered to supply an emergency, and their duty was to ascertain under what authority they supplied them.

Point VIII.

The fact that the goods were charged to the vessel or owners does not establish the fact that credit was given to the vessel.

The Francis, supra.

It was an act of the libellants, of which claimant had no notice, and which cannot be binding upon him.

Point IX.

The certificate states that the libellants believed the ship to be responsible for the supplies.

Admitting that they labored under this delusion as to their legal rights, it is not a delusion for which the claimants are responsible nor for which their ship should be held.

But this belief should be taken in connection with the provisions of the statute of New York State. The libellants by reason of such statute could have acquired a lien on the vessel for such supplies, whether they were ordered by the owner or charterer, or in a home port or a foreign port. At the time the goods were first ordered, libellants might well believe that it was not necessary to make any inquiries as to the credit of the person ordering the supplies, knowing they could obtain a lien on this vessel under the State statute, but they did not resort to the State statute nor file the statement required thereunder; the only inference drawn from this is that while they may have relied upon this lien when they first commenced to deal with the Steamship Company, yet it was simply a secondary consideration, and having presented to the charterer a number of bills which had been paid they no longer thought of the necessity of resorting to the vessel to obtain payment for the goods furnished. This is strongly supported by the fact that they did not file such lien, although they had six months in which to file the same after the last item of goods was furnished. If they had relied upon the vessel as a means of payment, they would not have taken any chance, as under the statute it was not necessary for the libellant to ascertain whether the vessel was a foreign or domestic vessel, who the owners were, or whether there was any necessity for furnishing the goods in question, or the terms of any charter party, but simply to file the statement of their lien. The fact that the libellants did not proceed under the State statute is a strong presumption that they did

not intend, after the commencement of their dealings and the establishment of the credit, to rely upon the vessel, but upon the personal credit of the charterers.

Point X.

The fact that the libellants believed that the vessel was responsible for the supplies does not create any presumption that they ever believed they were entitled to a *maritime lien*.

While in this case the material-man may have believed that the vessel was responsible for the goods, this belief must have been based upon the fact that the State statute gave them a lien upon the vessel upon complying with its terms; for there is nothing in the case justifying any presumption that the libellants relied upon any general maritime lien upon the vessel. The certificate shows that they did not know whether it was a domestic or a foreign vessel, or where the owners resided, whether at the port where the goods were supplied, or at a foreign port, and made no inquiry on this subject. Where a material man intends to rely upon the general maritime lien for supplies furnished, it can only be on the presumption that the vessel is a foreign vessel or is owned by owners residing in a foreign port. Thus, if the libellants believed the New York Steamship Company to be the owners of the *Valencia*, and that this corporation did business and was organized under the laws of the State of New York, they must have known that there was no maritime lien, and, therefore, they must be presumed not to have dealt on the credit of the vessel so far as a general maritime lien is concerned. The same principle should apply where they made no inquiries, because then they were not relying on any fact which would justify them in supposing that they were entitled to a maritime lien.

Point XI.

We, therefore, contend that under the circumstances of this case, the libellants were not entitled to a general maritime lien, and that this Court should so certify to the Circuit Court of Appeals.

April 28, 1896.

F. R. COUDERT,
Attorney for Claimant.

F. R. COUDERT,
JOSEPH KLING, } Of Counsel.

Office Supreme Court, U. S.
FILED.
JUL 25 1896
CLERK.

Supreme Court of the United States.

WILLIAM H. ZIEGLER and another,
Libellants and Appellees,

vs.

The Steamship VALENCIA, her Tackle, &c.; WILLIAM G. BOULTON, *et al.*,
Claimants and Appellants.

October Term, 1895. No. 305.

On certificate from the United States Circuit Court of Appeals for the Second Circuit, pursuant to Section 6 of Chapter 517 of the Laws of 1891.

Statement of Facts.

The libellants furnished coal in the port of New York for the specific use of and to be delivered by them on board the steamship *Valencia*, the same being necessary to enable her to make a series of regular trips from New York to and from ports in Maine. The coal was furnished upon orders given to the libellants by the New York Steamship Company, a New Jersey corporation engaged in busi-

ness at the port of New York. In some cases these orders were sent direct by mail, in others were transmitted through a broker to libellants, either by the general manager of the company or the superintendent of its docks. The corporation operated the steamship under a charter which required them "to provide and pay for all the coals," etc. None of the coal was delivered upon the order of the master, or by his procurement, or within his expressed assent. The vessel was owned by citizens of New York but was registered at the port of Wilmington, N. C. At the time libellants furnished the coal they were not aware of the existence of the charter, nor did they know where this ship hailed from, whether she was foreign or domestic, who her owners were, or what relation the New York Steamship Company bore to the vessel, except that it appeared to be directing its operation, and they were ignorant of its credit. The libellants made no enquiry as to the solvency of the New York Steamship Company or as to who were owners of the ship, nor as to whether she was a foreign or domestic vessel, but, believing the ship to be responsible for supplies thus furnished, delivered the coal and charged the same on their books to "S. S. *Valencia* and owners, New York," or in some cases "City," or in others "Pier 49, E. R., New York." The Laws of the State of New York (Chap. 482 of 1862) provide that:

SEC. 1. Whenever a debt amounting to fifty dollars or upwards, as to a sea-going or ocean-bound vessel * * * shall be contracted by the master, owner, charterer, builder or consignee of any ship or vessel or the agent of either of them within this State for either of the following purposes:

1st. On account of work done or materials or other articles furnished in this State for or towards the building, repairing, fitting, furnishing or equipping such ship or vessel.

2d. For such provisions and stores furnished within this State as may be fit and proper for the use of such vessel at the time the same was furnished * * * such debt shall be a lien upon such vessel, her tackle, apparel and furniture, etc., provided such lien is filed within a specified time and is proceeded under in the manner prescribed in such statute.

There is no fact proved in the case which will warrant the inference that either the master or the charterer agreed to pledge the credit of the vessel for the coal. Libellants began to supply coal on April 30th, 1890. They furnished from time to time, down to and including July 5th, six cargoes of coal, bills for which were sent to the office of the Steamship Company at No. 63 Broadway, New York, and paid by it. No lien was filed under the State statute. Libellants insist that for other supplies of coal of the value in the aggregate of $1,608.55, furnished in the months of June, July and August, they are entitled to a maritime lien on this ship. The District Court sustained their claim, and appeal was taken to this Court.

Now, therefore, pursuant to Section 6 of Chapter 517 of the Laws of 1891, this Court does hereby certify to the Supreme Court the following question or proposition of law concerning which it desires the instructions of that Court for its proper decision, to wit:

Question.—Whether, upon the above statement of facts, the libellants obtained a maritime lien

upon the steamship *Valencia* for the supplies thus furnished and not paid for?

New York, Dec. 12th, 1893.

WM. J. WALLACE,
E. HENRY LACOMBE,
N. SHIPMAN.

The question certified by the Judges of the Circuit Court of Appeals involves two branches:

First.—Whether the credit was given to the vessel, or to the owners or charterers?

Second.—Whether the statutes of the State of New York apply to foreign vessels.

It is unfortunate that the whole record is not before the Court, as the record would show what the charter of the vessel was, and what were the rights of the charterers and owners *inter sese*. A motion that the record be certified to this Court was made herein and denied. We are, therefore, compelled to accept the facts stated in the certificate of the Judges as the only evidence upon which an argument can be based.

First.—*As to whether or not the credit was given to the vessel the certificate of the Court below concedes that sole credit was given to the vessel.*

The law is not doubtful.

This Court, in the case of the *Grapeshot* (9 Wallace, 129) laid down the following principles:

1. Liens for repairs and supplies, whether im-

plied or express, can be enforced in admiralty only upon proof made by the creditor that the repairs or supplies were necessary, or believed, upon due inquiry and credible representation, to be necessary in a foreign port.

2. Where proof is made of necessity for the repairs or supplies, or for funds raised to pay for them by the master, and of credit given to the ship, a presumption will arise, conclusive in the absence of evidence to the contrary, of necessity for credit.

3. Necessity for repairs and supplies is proved where such circumstances of exigency are shown as would induce a prudent owner, if present, to order them, or to provide funds for the cost of them on the security of the ship.

In the *Patapsco* (13th Wallace, 329) this Court held as follows:

"Supplies furnished to a ship in a foreign port "and necessary to enable her to complete her voyage "and actually so used by her, constitute a lien, "unless it can be inferred that the master had "funds or the owners had credit.

"It is undisputed that the *Patapsco* was in a "foreign port and that the coal was ordered for her "specifically by name and delivered to the officers "in charge of her. It is equally free from dispute "that the supply of coal was necessary indeed indis-"pensable to enable her to make her voyage at all. "In such a case the inference is that the credit was "given to the vessel unless it can be inferred that "the master had funds or that the owners had "credit and that the material man knew of this or "knew such facts as should have put him on in-"quiry. There is no reason to suppose that the "master had funds or the owners of the line credit

" nor that the libellant was guilty of laches. If " the credit was to the vessel there is a lien and the " burden of displacing it is on the claimant. He " must show affirmatively that the credit was " given to the company to the exclusion of a " credit to the vessel. The lien of material man " for supplies in a foreign port is of so high a " character that in the case of the *St. Jago de Cuba* " it was protected along with that of seamen's " wages against a forfeiture which had accrued to " the United States, and the recent decisions of this " Court had the effect to place this lien on a more " substantial footing than some previous cases seem " to have left it."

In the case of the Lulu, 10th Wallace, 192, this Court, at page 197, says:

" Where it appears that the repairs and supplies were necessary to enable the vessel to proceed on her voyage and that they were made and furnished in good faith the presumption is that the vessel as well as the master and owners is responsible to those who made the repairs and furnished the supplies, unless it appears that the master had funds on hand or at his command which he ought to have applied to the accomplishment of those objects, and that they (libellants) knew that such was the fact or that such facts and circumstances were known to them as were sufficient to put them upon inquiry and to show that if they had used due diligence in that behalf they might have ascertained that the master under the rules of the maritime law had no authority to contract for repairs and supplies on the credit of the vessel."

An extended discussion of that question however is no longer necessary as the principle is con-

clusively settled by a recent decision of this Court where proof is made of necessity for the repairs and supplies and the credit given to the ship, the *presumption will arise said the Chief Justice, in the absence of evidence to the contrary, of necessity for credit.*

In the case of the *Kalorama*, 10th Wallace, 204, this Court went even further and held as follows:

> It is no objection to the assertion in the admiralty of the maritime lien against a vessel for necssary supplies to her in a foreign port, that the owner was there and gave directions in person for them; the same having been made expressly on the credit of the vessel.

From these decisions it would appear to be conclusively decided that the libellant's claim for supplies furnished to the *Valencia* is an admiralty lien, and that the decree of the District Court was properly made.

Second. — As to the second question, which was certified by the Circuit Court— namely, whether the lien law of the State of New York applies to foreign vessels— we respectfully submit to this Court that said law does not apply, and that the State of New York could not provide for a lien that arises against a foreign vessel for supplies furnished to her in a foreign port. It is apparent that said statute was not designed to apply to foreign vessels, and the Courts have invariably construed the State statutes creating liens on vessels to apply only to domestic vessels. If applied to foreign vessels, they would

be obnoxious to the Constitution of the United States as an infringement of the admiralty and maritime jurisdiction confided to the Federal Courts and would amount to a regulation of commerce.

The admiralty had already ample jurisdiction to enforce liens against foreign vessels, and no necessity whatever, exists for the intervention of the States, and the very fact that, if it applied to foreign vessels, it would be a restriction on the rights of the citizens of the State, is conclusive proof that it was not so intended. A foreigner could enforce his lien in admiralty against a foreign vessel without any restriction whatever, but if the lien law of the State of New York could be held to apply to foreign vessels, a citizen of the State of New York would be obliged to file specifications of his lien within thirty days or lose that lien. Certainly, there could have been no such intention on the part of the legislature creating the law.

There have been numerous decisions of the Circuit and District Courts on this point, but we think that, if it be necessary to cite any, that the cases of the *Chusan*, 2 Story, 455, and the *Lyndhurst*, 48 Fed. Rep., 841, will be sufficient to satisfy this Court what the law now is on that point.

The question certified by the Circuit Court should be answered in the affirmative.

Wm. W. Goodrich,
John A. Deady,
Counsel for Appellees.

165-273.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 180.

CELESTINE PIM, PLAINTIFF IN ERROR,

vs.

THE CITY OF ST. LOUIS AND THE ST. LOUIS SECTIONAL DOCK COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED OCTOBER 13, 1894.

(15,705.)